

(1984) 08 KL CK 0021
In the High Court Of Kerala

Secretary, Meters Staff Association

APPELLANT

Vs

United Electrical Industries Ltd.

RESPONDENT

Date of Decision : 23-08-1984

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (1984) 2 LLJ 446

Hon'ble Judges : U.L. Bhat, J

Bench : Single Bench

Judgement

U.L. Bhat, J.—Petitioners the Secretary of Meters Staff Association (for short "the Association") a trade union registered under the Trade Unions Act, 1956 and formed in 1960 and recognised by the Management of the United Electrical Industries Ltd., Quilon (for short "the Company") in 1960 itself. The Company under Ext. P5 letter informed the Association that the recognition enjoyed by the Association has been withdrawn. This original petition is filed under Article 226 of the Constitution of India seeking to quash Ext.P5 and seeking a writ of mandamus directing the respondent to continue to recognise the Association as a trade union representing the employees of the Company. On behalf of the respondent, the Deputy General Manager of the Company has sworn to a counter-affidavit. Petitioner has filed a reply affidavit.

2. The total strength of the employees of the Company is over 500. Of them, strength of the clerical staff is said to be 110. Total strength of 5 the clerical staff and the workers is said to be 500; the rest are in officers' cadre. Admittedly, the Association has been recognised by the Company, has participated in negotiations and has been party to several settlements. Under 10 Ext.PI, the Company wrote to the petitioner requesting for a list of the members of the union for the "purpose of its record". According to the respondent, similar letters had been addressed to the other unions also. Petitioner sent Ext.P2 reply furnishing a list of 17 employees of the Company said to be the members of the Association, According to the respondent, the list includes two officers who are

not eligible to be members according to the bye-laws of the Association. A rival union wrote Ext.R1(a) letter to the Company stating that 10 employees of the Company whose names are seen in Ext.P2 have resigned from the Association and have become members of the rival union. Respondent wrote Ext.R1(b) letter to the petitioner seeking clarification. Petitioner wrote Ext.R1(c) reply confirming the resignation. On the same day, petitioner wrote Ext.P3 letter to the respondent stating that employees of the Company named therein have joined the Association. According to the respondent, among the 13,12 are workmen not eligible to be members of the Association and only one belongs to the clerical staff. Under Ext.P4, petitioner informed the respondent that two more employees named therein had joined the Association. According to the respondent, these two persons are only workers and not members of the clerical staff. This exchange of letters was followed by the impugned letter, Ext.P5. In Ext.P5, it is stated that the Association was always taken to represent the "staff only and not "workers" and "officers" and the Association has only six members of the "staff as its members and that is below 10 percent of the total "staff strength. Ext.P5 further stated that the membership "falls far short of the minimum required to qualify a Union for recognition. In this context we have in mind the guidelines recently issued by Government and the contemplated legislation in that regard". That was stated to be the reason for withdrawing the recognition.

3. According to the petitioner, under the bye-laws of the Association all categories of employees, that is, officers, clerical staff and workers are eligible to be members and the Association's right to representative capacity of these categories of employees has all along been accepted, the expression "staff has been used in the bye-laws in the general sense and not in any restricted sense. It is further argued that there are no Government guidelines in regard to the question of recognition or de-recognition based on the percentage of membership of the union with reference to total strength of employees, that the decision reflected in Ext.P5 was taken on wholly irrelevant grounds and ignoring relevant circumstances. It was in violation of principles of natural justice in as much as Ext.P5 involves serious and adverse consequences for the Association and the decision should not have been taken without giving an opportunity to the petitioner to show cause.

4. Though in the counter affidavit it is alleged that the respondent is not a "State" for the purpose of Article 12 of the Constitution, this has not been urged at the time of arguments. According to respondent's counsel, "recognition dispute" is essentially an industrial dispute, there is no right of recognition as such and the Company does not recognise any such right. This alleged right is not enforceable either in civil court or under writ jurisdiction. Principles of natural justice do not apply to the instant case and in any event there is no ground made out for interference under Article 226 of the Constitution of India.

5. In the Original Petition, it is averred that the Company is a Government Company, appointments to which are made on the advice of the Kerala Public

Service Commission, the Company has to obey instructions issued by the Government and therefore it is State under Article 12 of the Constitution. In reply to this, all that is stated in the counter-affidavit is that the Company, though a Government company, is carrying on commercial activities and does not have the power to issue binding regulations, the violation of which is punishable under the Indian Penal Code and therefore Article 12 is not attracted. There is no dispute that the Company is a Government Company wholly owned and controlled by the Government. It was constituted by the Government and works fully under the control of the Government. The management of the Company is an appointee of the Government and has to function under the directions, of the Government. There could, therefore, be no doubt that it attracts Article 12 of the Constitu- 40 tion.

6. The main dispute centres round the question whether the exercise of discretion of the management de-recognising a trade union could be interfered with under Article 226 of the Constitution under any circumstance and whether in arriving at a decision to de-recognise a union, the management is bound to act in conformity with principles of natural justice. The principle canvassed in this case is the right to be heard. The other aspect urged involves the question whether the decision of the respondent is based on wholly irrelevant grounds or has been arrived at after taking into consideration relevant grounds.

7. learned Counsel for the respondent has placed strong reliance on a decision of a Division Bench of this Court in *M.A. David v. KS.E, Board* 1973 XI LLJ 466 That case also related to withdrawal of recognition of a union by the management. The union filed an original petition to quash the decision. The original petition was dismissed by a learned single Judge by the judgment reported in *M.A. David v. The Kerala State Electricity Board* 1972 I LLJ 44 The judgment in writ appeal is the one reported in 1973 XI LLJ 466. The decisions of a learned single Judge of the Madras High Court in *Southern Railway Mazdoor Union Vs. Southern Railway* (by General Manager), of a Division Bench of the Assam and Nagaland High Court in *North-East Frontier Mazdoor Union v. The General Manager, North-East Frontier Railway* 1970 XI LLJ 486 and of a Division Bench of the Calcutta High Court in *A.C Mukherjee v. Union of India* 1976 C.W.N. 208 were relied on. The decision of the Madras High Court did not relate to this question. this Court declined to follow the view taken by the Assam and Nagaland High Court but preferred to follow the view taken by the Calcutta High Court. this Court pointed out that there was no statutory rule or agreement between the management and the union that the recognition once granted will not be withdrawn without giving an opportunity to the union to be heard. Even if there is an agreement unless it could be construed as part of the conditions of service, writ jurisdiction may not be invoked. In such circumstances, according to this decision, the union cannot insist that it should be heard before recognition has been withdrawn. It was also pointed out that what the management did was only to lay down a policy as to how industrial peace could be achieved, which unions should be considered as representative of particular categories of employees and which unions should be

allowed to resort to collective bargaining on behalf of the said workers. It was also stressed that the arrangement under the impugned order was only for three years and it was quite possible that after three years if circumstances change and representation of the workers in particular unions also change, the board might change the decision and recognise some other unions which are then found to be more representative of the categories of workers and in that re-arrangement, this union might also be recognised for the particular type of workers it represents. In this view, the claim of the union was negated.

8. There are two other decisions of the Madras High Court relied on by learned Counsel for the petitioner. Both these decisions arise from the same case. The first is the decision of a learned single Judge in Tamil Nadu Electricity Board Accounts and Executive Staff Union, by its Secretary v. Tamil Nadu Electricity Board, by its Secretary 1980 XI LLJ 246. The writ petition was filed by the union whose recognition was withdrawn. The learned single Judge allowed the petition and quashed the impugned order. The Board filed a writ appeal and the decision of a Division Bench is reported in 1980 XI LLJ 440. Both these judgments referred to the decision of this Court in M.A. David's case (supra). The Madras High Court distinguished the decision in M.A. David's case (supra), on facts and held as follows: at para 6 of 1980 XI LLJ 440.

Equally admittedly the Code of Discipline in Industry is not statutory. Notwithstanding this, it is conceded by the learned Counsel for the appellant that the Code of Discipline in Industry does contemplate recognition and that it was only under the Code recognition was applied for and granted. It is not disputed that the grant of recognition confers a status on a body like the respondent-union to represent the workers in a particular category, with reference to their service conditions, with the management; in other words, it becomes a bargaining agent on behalf of the group of workers with reference to which it was recognised. Withdrawal of that status or recognition will certainly bring about adverse consequences, on a body like the respondent-union, and with reference to such adverse consequences, even an order of withdrawal like the one made by the appellant is illegal or is in violation of principles of natural justice. Certainly a body like the respondent-union can approach this Court under Article 226 of the Constitution of India.

(Emphasis supplied)

9. In T.C.C. Thozhilali Union Vs. T.C.C. Ltd., this Court pointed out that a recognition dispute is essentially an industrial or trade dispute, the resolution of which does not lie within the jurisdiction of a civil court. That is because the dispute does not involve a common law right or a statutory right. On this limited question, the same view was taken in Devassia v. St. Mary's Forance Church 1983 KLT 172.

10. No doubt, the observations in M.A David's case stand against the petitioner. But as pointed out by the Madras High Court, the decision is clearly

distinguishable on facts. What was in question there was a policy decision taken by the Electricity Board for a particular period. In the matter of taking a policy decision, the union was stated to have no right "to be heard. That principle may not apply where a question of de-recognition of an individually recognised union arises for consideration. What perhaps was not urged and therefore what did not arise for consideration in that case was the impact of adverse consequences arising from the decision. In *National Textile Workers' Union and Others Vs. P.R. Ramakrishnan and Others*, a Constitution Bench of the Supreme Court stated that "the audi alterum rule which mandates that no one shall be condemned unheard is one of the basic principles of natural justice and (if) this rule has been held to be applicable in a quasi-judicial or even in an administrative proceeding involving adverse civil consequences". In that case, departing from the traditional view which held the field, the Supreme Court held that the workers of a company have a right to be heard in winding up proceedings under the Companies Act. The right to be heard in those circumstances is a right based on the principle of fairplay in action. The winding up order has the effect of termination of the services "of the workers and for the court to bring about such a consequence without giving an opportunity of being heard to the workers would be violation of principles of fairplay. This aspect was not urged before this Court in *M.A. David's* case (supra) and naturally it was not considered also.

11. No doubt, recognition dispute "is essentially an industrial dispute" normally outside the jurisdiction of civil court or even of writ jurisdiction. It was traditionally accepted that the question of recognition or derecognition is a managerial function in which the workers or unions have no legal say. But this traditional concept no longer survives in its pristine form Executive Governments no longer confine to their activities to the traditional functions of Government. The concept of Governmental activity itself has undergone a revolutionary change. It is now generally accepted that Executive Government has the right and also the duty to intervene decisively in the socio-economic life of the nation. Today, it is an accepted fact of life that Governments enter the economic field in decisive if not dominant way in the guise of corporations or companies. At the same time, the traditional view that the role of workers or employees in industrial undertakings is merely one of selling labour power has yielded place to a more enlightened view. Workers' participation in management is an accepted national policy. Even though workers may not find themselves in the seat of management, by exercising their right of collective bargaining they do contribute to the shaping of policy and the implementation of policy by managements. Trade unions have begun to occupy a pivotal position in the scheme of things. For a union to be recognised is of vital concern to it and also the workers who are banded together under that union. Recognition of the union confers on it the right to participate in collective bargaining and thereby to take a hand in shaping managerial decisions. Recognition certainly confers a status on the union to represent the workers and as a bargaining agent. Unions have come to enjoy various facilities by virtue of such status. De-recognition involves deprivation of

such status, right and facilities. It certainly involves serious adverse consequences. No doubt, the decision to de-recognise a particular union can be regarded as an administrative decision or order. Nevertheless, since it involves serious adverse consequences to the union and the employees organised under the union, their right to hearing before the decision is taken has certainly to be recognised, as part of the principle of fairplay in action. If the decision is taken without giving a hearing to the union, it has to be regarded as violative of principles of natural justice and must be treated as void. This is not an aspect considered in M.A. David's case (supra). The facts of the case are easily distinguishable. I am unable to regard that decision as laying down an immutable principle applicable to all cases in all situations.

12. Respondent has no case that a hearing was given to the petitioner before the decision reflected in Ext.P5 was arrived at. However, learned Counsel for the respondent made an attempt to show that in effect hearing was given. learned Counsel referred me to the correspondence which passed between the Association and the Company. The correspondence started with Ext.PI. Ext.PI did not indicate that the question of de-recognition was on the agenda. It contained a simple request to the Association to furnish a list of members for the purpose of the Company's record. At no stage was the Association informed that the Company was considering de-recognising the Association. The Association was completely unaware that correspondence was aimed at the exercise of de-recognition. It is, therefore, clear that the Association was not heard in the matter. To have de-recognised the Association without informing the Association that the question of de-recognition was under consideration and without giving an opportunity to the Association to have its say in the matter was certainly violative of principles of natural justice. The decision is therefore unsustainable.

13. For another reason also, the decision cannot stand. Apart from the arithmetic involved, the decision basically rested on the premise that the membership of the Association fell short of the alleged minimum required to qualify the union recognition. In arriving at this decision, the Company reported to proceed on the basis of the "guidelines recently issued by the Government and the contemplated legislation in that regard". In the O.P, a specific challenge was made in regard to these matters. Petitioner has stated that Government had not issued any guidelines. This averment in para D of the grounds in the O.P. has not been effectively traversed in the counter affidavit. In any event, no such guidelines are forthcoming. learned Counsel for the respondent was not able to refer me to any such guidelines issued by the government. On the other hand, learned Counsel for the respondent stated that reference to guidelines issued by the Government must have been a mistake for the guidelines in the Code of Discipline formulated at the 15th session of the Indian Labour Conference. The Code of Discipline is only a collection of certain principles evolved at the tripartite conference. The Code of Discipline makes no mention of 10 per cent criteria. Of course it deals with question of recognition. But the criterion laid down is 15 per cent. That is evidently not followed by the Company. The Company has proceeded on the

assumption that there are guidelines binding on the Company requiring a union to have on its rolls 10 per cent of the staff force or workers force of the Company as its members in order to secure and retain recognition. Admittedly, there is no such binding guideline. There is no case that the Company had taken such a decision either, as a matter of policy- It is therefore clear that the decision rested on a non-existent premise and is based on wholly irrelevant ground. The decision cannot therefore stand.

In the result, the original petition is disposed of quashing Ext.P5. In the circumstances, there will be no direction as to costs.